

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 07-10772-RGS

CLEAR CHANNEL OUTDOOR, INC.

v.

INTERNATIONAL UNION OF PAINTERS AND
ALLIED TRADES, DISTRICT COUNCIL NO. 35;
INTERNATIONAL UNION OF PAINTERS AND
ALLIED TRADES, LOCAL 391; RALPH HARRIMAN, individually;
JOSEPH ITRI, individually; CHARLES FOGELL, individually;
and UNIDENTIFIED JOHN AND JANE DOES

MEMORANDUM AND ORDER ON PLAINTIFF'S
REQUEST FOR INJUNCTIVE RELIEF

April 26, 2005

STEARNS, D.J.

This case arises out of a breakdown of collective bargaining between plaintiff Clear Channel Outdoor, Inc. (Clear Channel), a company that sells and maintains outdoor advertising, and two bargaining agents: the International Union of Painters and Allied Trades, District Council 35, and the International Union of Painters and Allied Trades, Local 391 (collectively, the Unions). After many months of unsuccessful negotiations, on March 19, 2007, Clear Channel unilaterally implemented changes in company work rules. The Unions immediately called a strike. In addition to picketing, Clear Channel alleges that Union members have engaged in illegal and offensive acts. These include blocking the entrances and exits to Clear Channel's facility in Stoneham, Massachusetts, verbal harassment of nonstriking employees, the photographing of nonstriking employees and their vehicles, assaults on nonstriking employees, and vandalism. According to Clear

Channel, these acts by striking employees have been “ordered, instigated, authorized and/or ratified” by the Unions. Because of an alleged unwillingness on the part of Stoneham police to maintain order, Clear Channel seeks an order enjoining the Unions and Union members from:

(1) verbally insulting, taunting, cursing, or threatening Clear Channel’s employees, contractors, and others attempting to enter or exit the Stoneham premises, engaged in work at remote locations, or at their residences; (2) using abusive, indecent, racially-charged, foul or threatening language towards any and all persons at or in the vicinity of Clear Channel’s Stoneham facility or at remote locations; (3) interfering in any manner, directly or indirectly, with Clear Channel, its officer, agents, supervisors, representatives and employees, or preventing them from engaging in the performance of any duties, whether performed on behalf of Clear Channel or otherwise; (4) delaying, obstructing, hindering or in any other way interfering with the movement of vehicles or any other operations of Clear Channel of any nature or description whatsoever; (5) interfering, obstructing, harassing, intimidating, assaulting, battering, or threatening or endeavoring to interfere with, obstruct, harass, intimidate, assault or batter any of Clear Channel’s employees; (6) distracting, through the use of any loud noise, Clear Channel’s employees while they are engaged in work on ladders or at dangerous heights; (7) destroying or damaging any and all property owned by Clear Channel or its employees, or contractors; (8) placing more than 6 pickets in the environs of Clear Channel’s Stoneham facility; (9) placing more than 2 pickets in the environs of Clear Channel’s operations at remote billboard locations, (10) coming within 50 feet of Clear Channel’s employee’s while engaged in their work at remote locations, and (11) protecting, aiding, abetting, or assisting anyone in the commission of said acts hereinbefore stated.

The same alleged conduct is also the subject of an unfair labor practice charge filed on April 11, 2007, by Clear Channel with the National Labor Relations Board (NLRB).

A federal court has limited authority to use its injunctive power to intervene in a labor dispute. By the express terms of the Norris-LaGuardia Act, 29 U.S.C. § 101,

[n]o court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or

permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

Under Section 7 – “one of a set of interlocking provisions of the Norris-LaGuardia Act designed to curb the use of federal injunctions in cases involving or growing out of a labor dispute” – no injunction may issue without the holding of an evidentiary hearing and then only after explicit findings by the court that: (1) absent equitable relief the employer will suffer irreparable injury to its property; and (2) that local police “are unable or unwilling to furnish adequate protection.” Tejidos de Coamo, Inc. v. ILGWU, 22 F.3d 8, 11 (1st Cir. 1994). While section 7 of the Act is often read to preclude injunctive relief unless essential to prevent property damage resulting from violence, “we see good reason to preserve at least the potential for injunctive relief where unlawful (but non-violent) acts threaten to cause ‘substantial and irreparable injury’ to some property-like interest (other than physical security).” Id. at 13.

At Clear Channel’s request, the court held an emergency hearing on the motion for injunctive relief on Tuesday, April 24, 2007. While the court was unable, given its schedule, to take evidence, it heard argument and invited a response from the Unions. The response, which concerned the court’s suggestion that invocation of the primary jurisdiction doctrine might be appropriate, was filed yesterday, April 25, 2007.

After considering the arguments and the pleadings, the court will not at this time proceed with an evidentiary hearing. There are two reasons for the court’s decision. First, equitable relief is largely prospective and not as a rule intended to remedy past harms.

The conduct complained of by Clear Channel is focused primarily on a rally held by the Unions on April 19, 2007, during which a “mass picket” is alleged to have obstructed “lawful ingress to and egress from Clear Channel’s Stoneham facility.” Verified Complaint, ¶¶ 28, 43, 47. At the hearing, the Unions, without conceding any illegality,¹ offered to stipulate that: (1) they and their members will conduct no further “mass” picketing; and (2) that they and their members will engage in no acts in pursuit of the goals of the strike that constitute criminal offenses under state or federal law. For reasons that are not clear, Clear Channel rejected the stipulation. Nonetheless, the court regards the offered stipulation as a solemn commitment by the Unions to the court intended to obviate the need for an injunction. Consistent with the cautionary approach mandated by the Norris-LaGuardia Act, the court prefers to test the sincerity of this commitment before considering the granting of extraordinary relief.

Second, the court is of the view that absent a threat of imminent or ongoing violence, this is an appropriate case in which to defer to the expertise of the NLRB.² “[I]n cases raising issues of fact not within the conventional experience of judges or cases

¹The Unions state that the Lt. Governor of Massachusetts was among the speakers at the allegedly illegal “mass picket.”

²Federal and state courts are without jurisdiction to regulate conduct “arguably subject” to sections 7 and 8 of the National Labor Relations Act. San Diego Building Trades Council v. Garmon, 359 U.S. 236, 245 (1959). States need not, however, yield jurisdiction where labor related activity is “a mere peripheral concern of [the Act] . . . [o]r where the regulated conduct touche[s] interests so deeply rooted in local feeling and responsibility” that State regulation is expected. Id. at 243-244. See also Linn v. United Plant Guard Workers, 383 U.S. 53 (1966).

requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over.” United States v. Western Pacific Railroad Co., 352 U.S. 59, 64 (1956). “The [primary jurisdiction] doctrine is intended to ‘serve[] as a means of coordinating administrative and judicial machinery’ and to ‘promote uniformity and take advantage of agencies’ special expertise.” Massachusetts v. Blackstone Valley Elec. Co., 67 F.3d 981, 992 (1st Cir. 1995), quoting Mashpee Tribe v. New Seabury Corp., 592 F.2d 575, 580 (1st Cir. 1979). The doctrine, the court notes, is a rule of deference and not one that divests the court of subject matter jurisdiction. Puerto Rico Maritime Shipping Authority v. Federal Maritime Commission, 75 F.3d 63, 67 (1st Cir. 1996). The court will therefore stay the case to permit Clear Channel to renew its motion should the court’s expectations be disappointed or should the NLRB prove incapable of providing appropriate relief. See Reiter v. Cooper, 507 U.S. 258, 269-270 (1993).

ORDER

For the foregoing reasons, plaintiff’s request for a temporary restraining order is DENIED without prejudice.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE